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EXAMINER				
RUBY, TRAVIS C				
ART UNIT		PAPER NUMBER		
3785				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DocketingDept@young-thompson.com

Office Action Summary

Application No.

10/564,330

Applicant(s)

VAN DIJK, JACOBUS JOHANNES

Examiner

TRAVIS RUBY

Art Unit

3785

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 December 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8-12, 18, 19 and 21-27 is/are pending in the application.
- 4a) Of the above claim(s) 2-6, 18, 19 and 21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 8-12 and 22-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Status of Claims

1. Claims 1-6, 8-12, 18, 19, 21-27 are pending. Claims 2-6, 18, 19, and 21 are withdrawn as being drawn to a non-elected species. Claims 7, 13-17, and 20 were previously canceled. Claims 22-27 are newly added.
2. Claims 1, 8-12, and 22-27 are being examined.

Claim Objections

3. Claim 23 is objected to because of the following informalities: Line 6-7 recites "plural of the liquid discharge nozzles", which is grammatically incorrect and awkward in phrasing. Appropriate correction is required.
4. Claims 18, 19, and 21 are objected to for depending from Claim 15 which has previously been canceled. Appropriate correction is required.

Drawings

5. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the frame arranged around the internal separation wall of Claim 22 line 11 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing

should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 22-27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
8. Claim 22 recites the limitation "the liquid discharge nozzles" in line 18. There is insufficient antecedent basis for this limitation in the claim. "Liquid discharge nozzles" is not the same as "Liquid dispensing nozzles".
9. Claims 22-26 recite different meanings for the term "discharge". In Claim 22 line 18, the term discharge is used to mean supplying a liquid to the internal separation walls. However, in line 25 of Claim 22, "discharge" is used to mean collect and drain water from the internal

separation wall. It is unclear in the dependent claims 23-26 as to which meaning of discharge the limitation is implying, thus rendering the claim indefinite. Clarified claim language in which the term discharge is not used to mean both supply and return is requested.

10. Claim 23 recites “a liquid supply” in line 5. It is not clear as to how this recitation of a liquid supply relates to the previously recited liquid supply in Claim 22.

11. Claim 24 recites “a fixing” in line 3. It is not clear as to what this limitation is trying to recite.

12. Claim 27 recites “a still further channel, located above said further channel” in lines 2-3. The limitation refers to itself in defining the location, thus making it unclear as to where this further channel is supposed to be located.

13. Claim 27 recites “from an inside facing side of the internal separation wall” in lines 3-4. It is not clear as to which side the limitation is referring to as the “inside” could either be the inside relative to the two panels or the inside relative to the interior of the building. For examination purposes the limitation will be interpreted as being inside relative to the interior of the building.

Claim Rejections - 35 USC § 102

14. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

15. Claims 22, 23, and 25-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Nelson (US4452230).

Re Claim 22. Nelson discloses a partition for separating an interior of a building construction from surroundings of the building construction, the partition comprising (Figure 1):
a translucent external separation wall (ref 20) in contact with said surroundings, said external separation wall being installed permanently (Figure 7; Column 3 lines 66-68). Note that while there is structure which would permit the removal of the external wall (which is not precluded by claim language), should one of ordinary skill wish the wall to be permanent, it merely would never be removed by one of ordinary skill.

A translucent internal separation wall (ref 22) in contact with the interior of the building and located a distance of at least about five millimeters from said external separation wall, said internal separation wall being removable (Figure 7, The sheet is inserted via cords 40 onto fluted slots 41, thus illustrating that the wall can be removed from the structure; Column 5 lines 39-43);

a frame (ref 12) arranged around said internal separation wall (Figure 1 and 7 illustrate that the two frames 12 are on opposing ends of the internal separation wall 22, thus the frame is around the internal wall), said internal separation wall being movable into a space within said frame (Column 5 lines 39-43), said frame comprised of a top frame element (ref 12 in Figure 7) and a bottom frame element (ref 12 in Figure 8);

a liquid supply (ref 15) contained in said top frame element at a top location of said frame, a liquid supply comprised of liquid dispensing nozzles (ref 46) running along the length of said top frame element (Figure 7),

the liquid discharge nozzles (46) arranged to discharge the liquid, at plural locations along the length of said top frame, intermediate said external and internal separation walls (Figure 7 illustrates the discharge nozzles are in between the two separation panels) so that a liquid film moves between said separation walls along a sloping portion of and over said internal separation wall (Figures 7 and 8; Column 5 lines 52-56),

with a thermal insulating free space being present between said liquid film and the external separation wall (Column 5 lines 13-30; Air is present in the panels and thus would be considered an insulating space); and

a liquid discharge (47) contained in said bottom frame and running along the length of said bottom frame element and configured to collect the liquid of the liquid film moving off the internal separation wall for return to the liquid supply (Figure 8).

Re Claim 23, Nelson discloses said partitions connected to one another to define a roof (Figure 1; Column 3 lines 37-40),

a liquid supply (15) runs along the length of said connected partitions, plural of the liquid discharge nozzles (46) arranged to discharge the liquid on each of said connected partitions (Figure 7), intermediate said external and internal separation walls so that the liquid film moves between said separation walls along the sloping portion and over said internal separation walls (Figure 7; Gravity causes the water to fall down onto the internal separation wall 22, thus creating a film of water on the interior of wall 22); and the liquid discharge runs along the length of said connected partitions along the length of said bottom frame element (Figures 1, 7-8; Column 5 lines 52-57).

Re Claim 25, Nelson discloses said bottom frame comprises a gutter (Column 12 in Figure 8 can be considered a gutter as it is at a lower elevation than column 12 of Figure 7, thus water would naturally flow to the lower elevation and collect) serving as said liquid discharge, said gutter collecting the liquid of the liquid film moving off the internal separation wall for return to the liquid supply (Figure 8).

Re Claim 26, Nelson discloses said bottom frame comprises a gutter (column 12 in Figure 8) serving as said liquid discharge, said gutter collecting the liquid of the liquid film moving off the internal separation wall for return to the liquid supply (Figure 8 illustrates that the column 12 is collecting the water from the liquid supply 15 in Figure 7 and discharging the liquid through outlet 47),

said external separation walls connected to an upper portion of said gutter (Figure 8),
said internal separation walls connected to a lower portion of said gutter (Figure 8),
said gutter comprised of a cover (top portion of column 12 in Figure 8 is covering the gutter), an opening in the cover to capture rain water (ref 43), an upper channel for removing the captured rainwater (ref 44), further openings (48) located below the upper channel, the further openings for collecting the liquid of the liquid film moving off the internal separation walls, a further channel (ref 47) for removing the collected liquid moving off the internal separation walls,

said internal separation walls being connected to the lower portion of said gutter at a position below said further openings (Figure 8).

Re Claim 27. Nelson discloses said gutter further comprises a still further channel (ref 45) for collecting condensation from an inside facing side of the internal separation walls (Figure 8).

Claim Rejections - 35 USC § 103

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. Claims 1 and 8-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whitcomb (US4173212).

Re Claim 1. Whitcomb teaches a partition for separating two areas, an outer area and an inner area, the partition comprising (Figure 1):

two translucent separation walls (ref 18, 22) (Column 2 lines 23-33),

means for moving a liquid (ref 48) between said separation walls, said means comprising liquid dispensing nozzles (ref 54) arranged to provide a liquid film (Column 1 line 65 to Column 2 line 6; Column 3 lines 14-26; Column 3 line 64 to Column 4 line 11),

wherein one of said separation walls is an external separation wall in contact with said outer area (ref 22), wherein the other of said separation walls is an internal separation wall in contact with said inner area (ref 18), wherein said liquid film moves over said internal separation wall (Column 3 lines 14-26; Column 3 line 64 to Column 4 line 11), a thermal insulating space

being present between said liquid film and the external separation wall (Column 2 lines 42-51, Column 4 lines 45-61),

said external separation wall being installed permanently (Figure 3 illustrates the external wall anchored to the foundation; Column 3 lines 55-58), and

said internal separation wall being removable from said partition (Figure 3 illustrates that the internal wall can be removed by undoing the bolts 72 and wood runner 70; Column 3 lines 50-54).

Whitcomb teaches that the two panels are spaced apart and that spacers can be utilized to accomplish this (Column 2 lines 42-51) but fails to specifically teach that the two panels are at least five millimeters apart. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to space the two panels about five millimeters apart, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d272, 205 USPQ 215 (CCPA 1980).

Re Claim 8. Whitcomb teaches the partition separates the interior of a building construction from surroundings of the building construction (Figure 1), wherein said internal separation wall provided with liquid is adjacent to the interior of said building construction (Column 3 lines 14-26; Column 3 line 64 to Column 4 line 11).

Re Claim 9. Whitcomb teaches the internal separation wall or the external separation wall comprises polyethylene plastic (Column 4 lines 45-47). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use polyamide, since it has

been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended used as matter of obvious design choice. In re Leshin, 125 USPQ 416. In this instance, both materials are a clear plastic that are commonly used in heat exchange.

Re Claim 10. Whitcomb teaches that the external separation wall is provided with a surface that can be removed therefrom in order to form an opening in said external separation wall (Figure 3, Column 3 lines 55-58; The bolt and wood runner can be undone in one section to create an opening).

Re Claim 11. Whitcomb teaches a frame (ref 24) that is arranged around said internal separation wall and contains a liquid feed (ref 46) and a liquid discharge (ref 54) (Column 2 lines 35-51, Column 3 lines 1-26; Column 3 line 64 to Column 4 line 11).

Re Claim 12. Whitcomb teaches said internal separation wall can be moved into a space by said frame (Figure 1 and 2, Column 2 lines 35-51).

18. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nelson (US4452230) in view of Worrall (US4874026).

Re Claim 24. Nelson teaches a liquid supply (ref 15) for discharging a liquid onto an interior wall (Figures 7 and 8) but fails to specifically disclose a fixing attached to said liquid discharge, wherein, said internal separation wall is comprised of i) a roll-up film, and ii) a roller

construction connected to said roll-up film for rolling up and unrolling the roll-up film, said internal separation wall is configured to be rolled up by moving said roller construction toward said fixing, and said internal separation wall is further configured to be unrolled by moving said roller construction away from said fixing.

Worrall teaches a fixing attached to a structure wherein, an internal separation wall is comprised of i) a roll-up film (ref 40), and ii) a roller construction (ref 16, 38) connected to said roll-up film for rolling up and unrolling the roll-up film (Figure 1; Column 2 lines 50-64; Column 3 lines 5-15) said internal separation wall is configured to be rolled up by moving said roller construction toward said fixing, and said internal separation wall is further configured to be unrolled by moving said roller construction away from said fixing (Column 3 lines 21-31).

In view of Worrall's teaching it would have been obvious to one of ordinary skill in the art at the time of invention to modify the internal wall structure of Nelson to include a roller assembly in order to provide selective heat transfer only when additional cooling is necessary, thus increasing the efficiency of the system.

Response to Arguments

19. Applicant's arguments with respect to claims 1, 8-12, and 22-27 have been considered but are moot in view of the new ground(s) of rejection and the new interpretation of the references.

Conclusion

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to TRAVIS RUBY whose telephone number is (571)270-5760. The examiner can normally be reached on Monday-Friday 9:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Swann can be reached on 571-272-7075. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Travis Ruby/
Examiner, Art Unit 3785

/J J Swann/
Supervisory Patent Examiner, Art Unit
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